

ORDINANCE NO. 3187

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING CODE ENFORCEMENT (FILE IV-89-57(B)).

Whereas, The City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 2740 as amended, all as set forth in that certain report and recommendation of the Planning Commission dated August 3, 1989 and bearing Kirkland Department of Planning and Community Development File No. IV-89-57(B); and

Whereas, prior to making said recommendation the Planning Commission, following notice thereof as required by RCW 35A.63.070, on July 20, 1989, held a public hearing on the amendment proposals and considered the comments received at said hearing; and

Whereas, in regular public meeting the City Council considered the report and recommendation of the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Section 170.25 of Ordinance 2740, the Kirkland Zoning Code, is hereby amended as follows:

170.25 Violation of this Code

1. General - It is ~~unlawful~~ a violation for any person to do or cause any of the following to be done contrary to ~~or in violation~~ of this Code, and for the property owner to permit any of the following to be done contrary to ~~or in violation~~ of this Code:

- a. Construct, in any way alter, or move any improvement.
- b. Engage in any activity.
- c. Use or occupy any structure or land.
- d. Conduct any use.
- e. Create any conditions.

It is also unlawful a violation for any person to fail to perform any activity required by this Code. Violation of a provision of this Code is a civil infraction for which a monetary penalty may be imposed under this Chapter.

2. Criminal Penalty - Upon conviction of an unlawful act under or violation of this Code, the property owner or other person may be punished by a fine of not more than \$500 or imprisoned for not more than 90 days or both for each day or part of a day during which the unlawful act or violation occurs. The property owner or other person may also be ordered to discontinue the unlawful act or correct the violation. Monetary Penalty - The amount of the monetary penalty per day or portion thereof for each violation is as follows:

1. First violation, one hundred dollars;
2. Second violation, two hundred dollars;
3. Third violation, three hundred dollars;
4. Additional violation in excess of three, five hundred dollars.

3. Other Legal Remedies - Nothing in this Chapter limits the right of the City to pursue other lawful criminal, civil, or equitable remedies to abate, discontinue, or correct unlawful acts under or violation of this Code. Continued Duty to Correct- Payment of a monetary penalty pursuant to this Chapter does not relieve a person of the duty to correct the violation as ordered by the applicable department director.

3. 4. Other Legal Remedies - Nothing in this Chapter limits the right of the City to pursue other lawful criminal, civil, or equitable remedies to abate, discontinue, or correct unlawful acts under or violation of this Code.

Section 2. Subsection 170.30.3 of Ordinance 2740, the Kirkland Zoning Code, is hereby amended as follows:

170.30 Code Enforcement Officer- Order to Cease Activity

1. General - If the Code Enforcement Officer determines that any activity [~~is~~] being conducted or any improvement [~~is~~] being erected or altered:

(a) Does not conform to the Code  
and

(b) Such activity (i) involves use of noise emitting heavy construction equipment or land surface modification, or (ii) poses an immediate threat to the safety, repose or right of quiet enjoyment of neighboring property owners, or to the general public,

he/she may issue an order to cease activity.

2. Posting a Notice - The Code Enforcement Officer shall prominently post this order on the subject property and shall make reasonable attempts to send this order on to the property owner, the person in charge of the property, or the person causing the activity to be conducted or the improvement to be erected or altered.

3. Effect - When an Order to Cease Activity has been posted on the subject property, it is ~~unlawful~~ a violation for any person with actual or constructive knowledge of the Order to conduct the activity or do the work covered by the Order until the Code Enforcement Officer has removed the posted copy of the Order and issued written authorization for the activity or work to be continued. If an Order to Cease Activity is violated, the Code Enforcement Officer may issue a ~~Zoning Code Citation~~ Notice of Civil Infraction under Section 40 of this Chapter and need not first issue a Notice of Violation.

4. Appeal - An order to cease activity may be appealed in like manner as a notice of civil infraction to the Hearing Examiner under the provisions of Section 170.40. If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.

Section 3. Section 170.35 of Ordinance 2740 is hereby amended as follows:

170.35 Code Enforcement Officer - Notice of Violation

1. General - If the Code Enforcement Officer determines that any activity, condition, structure, or use exists that does not conform to this Code, he/she may issue a Notice of Violation. This Notice will specifically indicate -

a. What provision of this code are being violated; and The name and address of the property owner or other person to whom the Notice of Violation is directed; and

b. What is necessary to correct the violation; and The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

c. The time in which the violation is to be corrected. A description of the violation and a reference to that provision or provisions of this Code being violated; and

d. A statement of the action required to be taken to correct the violation as determined by the applicable department director and a date or time by which correction is to be completed, which date shall be not less than seven days after the date of issuance of the notice of violation; and

e. A statement that a monetary penalty in an amount per day for each violation as specified by Section 25 under this Chapter shall be assessed against the person to whom the Notice of Violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.

2. Notice to Occupant and Owner - The Code Enforcement Officer shall --

a. Leave a copy of this Notice with the occupant or person in charge of the property or post it in a conspicuous place on the subject property; and

b. Send a copy of the Notice by certified mail to the owner of the subject property.

3. Extension - Upon written request received prior to the correction date or time, the Code Enforcement Officer may extend the date set for correction for good cause. The Code Enforcement Officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

Section 4. Section 170.40 of Ordinance 2740, the Kirkland Zoning Code, is hereby repealed.

Section 5. There is hereby created a new Section to be known as Section 170.40 and to read as follows:

170.40 Code Enforcement Officer - Notice of Civil Infraction.

1. General. The Code Enforcement Officer may cause a Notice of Civil Infraction to be issued in either of the following circumstances.

a. There is a violation of a posted Order to Cease Activity.

b. If, after this time specified in the Notice of Violation, the activity, conditions, structure, or use cited in the Notice of Violation still does not conform to this Code.

2. Issuance.

a. The Notice of Civil Infraction will be issued to the owner of the property, the occupant or person in charge of the property and /or any other person causing or allowing the activity, conditions, structure or use to exist or occur.

b. Notwithstanding the provisions of Section 30 and 35 of this Chapter, the Code Enforcement Officer may issue a Notice of Civil Infraction without having issued a Notice of Violation or Order to Cease Activity when a repeated violation occurs within a six month period of time.

c. A Notice of Civil Infraction represents a determination that a Civil

Infraction has been committed. The determination is final unless appealed as provided in this Chapter.

3. Content. The Code Enforcement Officer shall include the following in the Notice of Civil Infraction.

a. The name and address of the property owner or other persons to whom the Notice of Civil Infraction is directed; and

b. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

c. A description of the violation and a reference to that provision or provisions of this Code which has been violated; and

d. A statement that the monetary penalty in the amount per day for each violation as specified in Section 25 of this Chapter is assessed against the person to whom the Notice of Civil Infraction is directed for each and every day, or portion thereof during which the violation continues beyond the date or time established for correction in the Notice of Violation; and

e. A statement that the person to whom the Notice of Civil Infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the City Clerk or may appeal the Notice of Civil Infraction as provided in Section 40 of this Chapter.

4. Service of Notice- The Code Enforcement Officer shall serve the Notice of Civil Infraction upon the person to whom it is directed, either personally or by mailing a copy of the Notice of Civil Infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the Notice of Civil Infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under

penalty of perjury declaring the time and date and and the manner in which service was made.

5. Appeal to Hearing Examiner-

a. A person to whom a Notice of Civil Infraction is directed may appeal the Notice of Civil Infraction including the determination that a violation exists or may appeal the amount of any monetary penalty imposed to the hearing examiner.

b. A person may appeal the Notice of a Civil Infraction by filing a written notice of appeal with the Department of Planning and Community Development within seven calendar days from the date of service of the Notice of Civil Infraction.

c. The monetary penalty for an continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the Notice of Civil Infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

d. The hearing before the hearing examiner shall be conducted as follows:

i. The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant seventeen calendar days before such hearing.

ii. The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.04 RCW. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

6. Action of Hearing Examiner.

a. The hearing examiner shall determine whether the City has proved by a preponderance of the evidence that a violation

has occurred and shall affirm, vacate, suspend or modify the amount of any monetary penalty imposed by the notice of civil violation with or without written conditions.

b. The hearing examiner shall consider the following in making his/her determination:

i. Whether the intent of the appeal was to delay compliance, or

ii. Whether the appeal is frivolous, or

iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city, or

iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations, or

v. Any other relevant factors.

7. Notice of Decision- The hearing examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.

8. Judicial Review- The decision of the hearing examiner may be reviewed for illegal, corrupt or arbitrary or capricious action in King County Superior Court. The petition for review must be filed within (30) calendar days of the final decision of the hearing examiner.

9. Collection of Monetary Penalty-

a. The monetary penalty constitutes a personal obligation of the person to whom the Notice of Civil Infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven calendar days from the date of service of Notice of Civil Infraction or, if an appeal was filed pursuant to Section 40 of this Chapter, within seven calendar days of the hearing examiner's decision.

b. The city attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies,



the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.

c. In the event of failure to appear at a hearing provided in Section 40, the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five (\$25) dollars.

d. In the event of a conflict between this Chapter and any other provision of this code or city ordinance providing for a civil penalty, this Chapter shall control.

Section 6. Ordinance 2740, the Kirkland Zoning Code, is hereby amended by adding a new section to be known as Section 170.42, entitled Failure to Satisfy Penalty and to read as follows:

170.42 Failure to Satisfy Penalty.

A person who willfully fails to pay a monetary penalty as required by provisions of this Chapter may be found in civil contempt of court after notice and hearing.

Section 7. Subsection 1.04.010(a), of the Kirkland Municipal Code, is hereby amended as follows:

1.04.010 Classes of crime - Penalties.

(a) Any offense defined by this code and any violation of a mandatory provision of this code or ordinance of the city constitutes a crime, unless it is an infraction. Infractions may be civil violations or traffic infractions. Civil infractions include only those violation specifically designated as such in this Code or other Ordinances of the City. Traffic infraction means an offense under the provisions of Title 12 of this code, for which monetary penalty may be imposed pursuant to RCW Chapter 46.63, et seq. Crimes are either simple crimes or serious crimes.

Section 8. Severability.

If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017 Kirkland Municipal Code in summary form attached to the original of this Ordinance and by this reference approved by the City Council, as required by law.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 5th day of December, 1989.

Signed in authentication thereof this 5th day of December, 1989.

Loris Cooper  
MAYOR

ATTEST:

Judy [Signature]  
City Clerk  
APPROVED AS TO FORM:

Ralph [Signature]  
Ralph E. Thomas  
City Attorney